STATE OF LOUISIANA.

SPEECH

OF

HON. F. T. FRELINGHUYSEN,

OF

NEW JERSEY,

IN THE

SENATE OF THE UNITED STATES,

APRIL 14, 1874.

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The Senate, as in Committee of the Whole, having under consideration the bill (S. No. 446) to restore the rights of the State of Louisiana—

Mr. FRELINGHUYSEN said:

Mr. PRESIDENT: Having rather incidentally than by deliberate purpose taken some subordinate part in the discussion of this question when it was before the Senate on a former occasion, I propose now to submit concisely my views on two propositions: First, that the President of the United States was authorized by the Constitution, standing alone, and that he was also authorized by the statutes of the country, to send armed protection to Louisiana; and second, that Congress is not authorized to order a new election in that State.

And I may here say that while I cannot agree with the conclusions of the Senator from Wisconsin, [Mr. CARPENTER,] I trust I do not violate delicacy in stating that I admire the marked ability with which he has presented his views. He has so presented the case that he may properly demand and not petition for it a serious and careful consideration. It is to the labors of that Senator and of the Senator from Indiana [Mr. MORTON] that we and the country are indebted for an understanding of this somewhat complicated subject.

I submit that the President was authorized by the Constitution, standing alone and not enforced by any statute, to send the protection he did to Louisiana. Mr. Kellogg was the governor *de facto* of that State. The President told us that he had so recognized him, and that he would continue so to do unless Congress directed to the contrary, and we purposely did nothing. Kellogg was therefore governor *de facto*, recognized by the President and by the silent acquiescence of Congress; and on the 13th of May, 1873, he sent the President this communication:

SIR: Domestic violence existing in several parishes of this State which the State authorities are unable to suppress without great expense and danger of bloodshed, and the Legislature not being in session, and it being impossible to convene the Legislature in time to meet the emergency, I respectfully make application, under

the fourth section of article 4 of the Constitution of the United States, for a sufficient military force of the United States Government to enable the State authorities to suppress insurrection and domestic violence.

Very respectfully, your obedient servant,

WILLIAM P. KELLOGG,
Governor of Louisiana.

To his Excellency U. S. GRANT,
President of the United States.

If the President was satisfied that domestic violence existed, on being called upon by the governor for a force to suppress it he was bound under the provisions of the Constitution to do so whether there was or was not any statute imposing that duty upon him. That disorder existed in that State cannot be questioned, because the preamble of the bill introduced for a new election truly declares in these words:

Whereas the public peace in said State is at present preserved and can only be preserved during the existing state of things in said State at the expense of the United States and by retaining a part of the army in said State.

That the demand upon the President was made according to the constitutional requirements (whether in compliance with the statutes or not) cannot be questioned, after reading the foregoing application.

Sir, the Constitution carefully distributes the powers of government into three branches, the legislative, judicial, and executive. Article 1, section 8, declares the powers of Congress in eighteen different clauses. Article 3, section 1, declares that the judicial power shall be vested in one Supreme Court and in such inferior courts as Congress may ordain and establish; and article 2, section 1, declares that the executive power shall be vested in the President of the United States. This distribution of power is essential to republican liberty. The aggrandizement of all power in one body, whether it consists of many individuals or of a unit, is despotism. The question is, to which of these three divisions of government the duty under the Constitution attaches to protect a State from domestic violence? The Constitution says that it is "the United States" that is to give this protection. We are here told that saying the "United States" shall give the protection is equivalent to saying that Congress shall give it. To that I cannot agree. If the Constitution had intended that Congress, as contradistinguished from the executive or judiciary, should give this protection, it would have enumerated this power among those conferred upon Congress in the eighth section of the first article. In that enumeration of the powers of Congress it is provided that Congress may suppress insurrection and repel invasion; but a general insurrection is a very different thing from domestic violence in a State. That term includes insurrection, but it comprehends much more that does not amount to insurrection. Neither can it be claimed that this power is given to Congress by the last clause of the eighth section of the first article, which says Congress shall have power "to make all

laws necessary and proper to carry into execution the foregoing powers," because this protection against domestic violence is not a foregoing power, not being mentioned until we come to the fourth section of the sixth article, while this provision as to making all laws, &c., is found in the eighth section of the first article; and besides, where the question is whether the President's power is restricted to the execution of a statute, rather than to the execution of the Constitution, it does not settle anything to say that Congress may make laws when necessary and proper. That is the very question. When not necessary they need not, and when not proper they may not, pass the law. I say that Congress need not pass a law to give authority to the President to afford this protection; not that they may not.

The term "United States" includes all three of the divisions of the Government, and that division of the Government is to act to which the duty appropriately belongs. If a State should pass a law tending to create an aristocracy, as that a State judgeship should be hereditary, then it would be the province of the judiciary to fulfill the guarantee and to declare such law void. In that case the judicial power is "the United States." If all law and all form of government in a State has been destroyed by a rebellion, so that it is necessary to have a new organization of government, then it is the legislative power that must fulfill this guarantee by setting up new governments, and then Congress is the United States. And here is where Andrew Johnson violated his duty and departed from his proper and legitimate powers, by undertaking as the Executive to exercise legislative functions. If there exist domestic violence, disorder, and obstruction to the laws, then it is the province of the Executive on being called upon to fulfill the guarantee of the Constitution and the Executive is "the United States."

Mr. President, this provision of the Constitution contemplates a sudden emergency, when violence has subjected and trampled down the law, and when, without waiting for the Legislature, the governor is to call upon the President for protection. Every other year Congress is for nine months not in session, and when in session the introduction of a bill, its reference to a committee, its report upon it, its being three times read and thus passing each House, and then to be subjected to the approval of the President, is a process inconsistent with the demands of the emergency as contemplated by the Constitution. I know Congress may delegate some of its powers; but when the duty is such that Congress cannot perform and that the Executive must, and the power is omitted in enumeration of the powers of Congress, and the power is carefully stated to belong not to Congress but to the United States, then we are to infer that the Constitution intended to confer the power on the Executive, and not that the duty was to be performed either by the President, or by any one else, by virtue of a delegation of power from Congress.

Again, the President of the United States is by the Constitution invested with all the power necessary to perform this duty. He is, by article 2, section 2, made the Commander-in-Chief of the Army and Navy; and then the Constitution, having given him this power, expressly declares "that the President shall take care that the laws be faithfully executed," and requires him to swear "that he will faithfully execute the office of President." There has never been any act passed requiring him to perform this constitutional duty. The Constitution need not be enacted into law to be enforced. It is itself the highest law. There might or there might not be an act of Congress authorizing the President to repel invasion; that is merely accidental. His duty is the same. If a fleet should come up the Potomac, is the President to stand like a cowardly dotard, with the Army and Navy at his control, until the White House is in ashes and the Capitol in ruins, waiting for a declaration of war by Congress, or authority to act from them? The Constitution has made him the custodian of the nation, the protector of its laws; it has given him the means to execute his high office, and he must perform it.

We claimed that the Rio Grande was the western boundary of Texas. Mexico disputed it; and President Polk sent General Taylor there in 1845 to protect our interests, and war existed for months before it was declared by Congress.

We obtained possession of Louisiana in 1803; of Florida in 1819; and there were frequent occasions when the President sent our fleet to guard the disputed territory between the Mississippi River and the Perdido.

It is true that it is the laws of the United States, and not of the States, that the President, under the Constitution, is to see are faithfully executed; but under our system of government the laws of the United States and the laws of the States are in their execution so inseparably interwoven and interlaced that it is impossible that the former can be executed and enforced in a State where anarchy exists; and consequently, under the provision that the President is to see the laws of the United States faithfully executed, he must see to it that anarchy does not exist in the State.

I do not see that we have on this question anything to do with the propriety of Durell's decisions. The President is intrusted with the Army, not to enforce any man's views or opinions; he is intrusted with the duty of enforcing the laws; he enforces the writ which speaks in the name of the United States, and is tested by the Chief Justice and must be obeyed. To hold the President responsible for unjust decisions because he insists that the process of the United States shall be respected, would be to hold that he must sit in judgment to approve or disapprove the findings of the Federal courts, and would be a commingling of the executive with the judicial functions

of greater absurdity, perhaps, than the merging of the powers of Congress with those of the Chief Magistrate as insisted on in this case.

I then submit, Mr. President, that protection from "domestic violence" under the fourth section of the fourth article appeals to the arm, the force, of the nation in an emergency, and is an appeal to the President, because the executive power is vested in him and it is executive power that is required; and because he is Commander-in-Chief of the Army and Navy, he is bound to see the laws faithfully executed; and because it is the United States and not "Congress" that guarantees against "domestic violence." Congress cannot take that power from the President. It is his. Congress may regulate it, may say he shall or shall not use the militia, he shall or shall not use the Army or the Navy; it may take from him all means of performing his constitutional duty, but when he has the means he must perform it.

I do not dispute that Congress may also execute this guarantee. There is, under the Constitution, a mixture as well as a division of powers. The President acts legislatively when he approves or vetoes a bill; the Senate acts judicially in impeachments; the House of Representatives acts as an inquest in its presentation of an impeachment; and the Senate shares the executive power in the matter of appointments and treaties; but the President in his sphere is as independent of Congress as Congress is of him. He may nominate, and with the advice of the Senate appoint, to office; he may convene Congress, and under certain circumstances may adjourn it; he may receive public ministers; he may make treaties, subject to ratification by the Senate; he must see to it that the laws are executed, and he must fulfill the guarantees of the Constitution when that duty appropriately belongs to him.

These powers cannot be taken from him.

Congress has sometimes attempted to encroach upon these powers. It tried to limit the pardoning power, but the Supreme Court sustained the President. In the case known as *Ex parte* Garland, found in 4 Wallace, 380, the court says:

> Congress can neither limit the effect of *his* pardon, nor exclude from its exercise any class of offenders. The benign prerogative of mercy cannot be fettered by any legislative restriction.

And again in 13 Wallace, 128, in a case arising under what is known as Drake's amendment, the court hold a similar doctrine. The House of Representatives, in 1796, attempted to limit the President's power to make treaties, and by a resolution declared that where a treaty depended for the execution of any of its stipulations on an act of Congress, it was the right of the House to deliberate on the expediency or inexpediency of carrying such treaty into effect. The case in question was a treaty with Great Britain.

Washington, in a message of March 30, 1796, denies such power; and Kent (volume 1, page 286) says: "The House of Representatives is not above the law, and has no dispensing power. The argument in favor of the conclusive efficacy of every treaty made by the President and Senate is so clear and palpable as to carry conviction throughout the community." We must be careful, if we intend to preserve this government, how the legislative branch, which is by far the most powerful, encroaches on the executive or on the judiciary.

Governor Kellogg was right in making his application for aid to rest on the Constitution rather than upon any statute.

But I submit that it is perfectly clear that the President was by statute also authorized to afford this protection. The statute of 1795 authorizes the President to use the militia in case of an insurrection in any State against the government thereof on the application of the governor or Legislature.

The act of 1807 substitutes the Army for the militia, and goes further than the act of 1795, and authorizes the President to use the Army not only in cases of "insurrection," but in cases of "obstruction of the laws either of the United States or of any individual State." This certainly was a case of obstruction of the laws of an individual State. I have that confidence in the legal judgment of the Senator from Wisconsin, that I am induced to believe that he will agree with me that the statute of 1807 applies directly to this case. My friend interrupts me, and truly says that the statute of 1807 contains a provision that the President is to use the Army where the militia could be used.

Mr. CARPENTER. Under the then existing law.

Mr. FRELINGHUYSEN. On the construction of the statute of 1807 we join issue; and as that issue is determined the President, so far as he acted under the statutes, was right or was wrong. My friend would strike out of the statute of 1807 the words "in case of obstruction of the laws of the United States or of any individual State." He would limit and nullify those words, because the act further says that he was to use the Army where it was lawful for him to call forth the militia to suppress an insurrection.

In construing a law we must, if we can, give effect to every part of it. I submit that those words, "where it is lawful for the President of the United States to call forth the militia," do not in any way limit or restrict the power given to the President to prevent the obstruction of the laws of a State, but have an entirely different office. They mean this: The statute of 1795 had declared that the President might use the militia where he was called upon by the Legislature or the governor of a State to suppress an insurrection. The statute of 1807 provides that he may use the Army to suppress an insurrection or to prevent the obstruction to the laws of the United States or

of any State where he could have used the militia, which is where he is called upon to prevent such obstruction to the laws by the Legislature or by the governor of a State. There is in the act of 1807 no provision excepting this reference back to the act of 1795 requiring the using of the Army to prevent an obstruction to the laws to depend on the President being called upon by the governor or Legislature for the aid of the Army. Let me read the two acts, and I do not see that there can be any difference between us as to their construction. The first act is in these words:

In case of an insurrection in any State against the government thereof it shall be lawful for the President of the United States *(on application of the Legislature* of such State, *or of the executive*, when the Legislature cannot be convened) to call forth such number of the militia of any other State or States as may be applied for as he may judge sufficient to suppress such *insurrection*.

The act of 1807 is as follows:

In all cases of insurrection or obstruction to the laws, *either* of the United States or of any individual State or Territory, *where* it is lawful for the President of the United States to call forth the militia for the purpose of suppressing such insurrection or of causing the *laws to be duly executed*, it shall be lawful for him to employ, for the same purposes, such part of the land or naval force of the United States as shall be judged necessary, having first observed all the prerequisites of the law in that respect.

Mr. CARPENTER. Will my friend allow me to put a question at that point?

Mr. FRELINGHUYSEN. Certainly.

Mr. CARPENTER. We entirely agree that under the act of 1807 the President cannot use the Army or Navy except in cases where by the former law he could use the militia. I understand that to be the Senator's view.

Mr. FRELINGHUYSEN. Not at all.

Mr. CARPENTER. I am speaking simply of the statute, not of the Constitution, now.

Mr. FRELINGHUYSEN. Not by the statute. I hold that under the act of 1807 the President may use the Army and Navy in a case of insurrection, and——

Mr. CARPENTER. Where he could not have used the militia before?

Mr. FRELINGHUYSEN. No.

Mr. CARPENTER. Then I understand the Senator, as I did before, to concede that under the act of 1807 the President is only authorized to use the Army and Navy in that class of cases where by the statute of 1795 he might have used the militia.

Mr. FRELINGHUYSEN. No; we differ again. My position is that he can only use the Army and Navy where under the act of 1795 he could use the militia to suppress an insurrection, but under the act of 1807 he may use the Army and Navy in other cases than to suppress insurrec-

tion; he may use them where there is an obstruction to the laws of an individual State.

Mr. CARPENTER. I now understand the Senator's position. That was all I wanted to do.

Mr. FRELINGHUYSEN. I think it would be contrary to all rules of construction to hold that you are to strike out those words "in case of obstruction to the laws of the United States or any individual State," and give them no significance.

Mr. CARPENTER. Does not my friend do the same thing with the words "in cases where by law he is authorized to use the militia?" I take that to be a description of the case in which the President is authorized to use the Army and Navy. It must be a case where prior to the act of 1807 he could have used the militia. Then under the act of 1807 he may have used the Army and Navy instead of the militia. Then go back to the former law to see where he may use the militia in a State; and it must be a case of insurrection in a State against the government thereof.

Mr. FRELINGHUYSEN. No, Mr. President; the significance of those words "where he could use the militia" is this: where he is called upon by the governor or the Legislature, as is provided in the act of 1795 in reference to the militia. It will be observed that there is in the act of 1807 no other provision requiring the use of the Army and Navy to depend upon the call to be made by the governor or Legislature. We thus give effect and force to every word of the act of 1807. By giving the construction to the statute of 1807 which my friend insists on, we strike out the words "in cases of obstruction to the laws of the United States or of any individual State," and also leave the act without any provision whatever making a call by the governor or the Legislature a necessary precedent to the use of the Army and Navy. The President was authorized by the Constitution standing alone, and was authorized by the statutes, to give the protection he did to Louisiana.

Now let me consider the second proposition, namely, that the United States is not authorized to order a new election in Louisiana. The Constitution provides that the United States shall guarantee to each State government peace, tranquillity, freedom from anarchy, and disorder; second, its guarantee is that each State shall have a government in form republican; that it shall not be in its frame-work an aristocracy, where authority is vested in a privileged order: that it shall not be a democracy, where the people in person exercise the sovereign power; the government shall not be a despotism, where the absolute power is exercised by a man or men without constitutional restraint; but that the government shall be in form republican, where the supreme power is intrusted to representatives elected by the people.

The Constitution says—and whether right or wrong we are controlled by it, and it is beyond all argument—that we are only to guarantee a republican *form* of government with order and tranquillity; and when we insist that full and accurate significance shall be given to the word "form" as it occurs in this provision of the Constitution we are not sticking in the bark, we are not superficial, but we are going to the very root of the matter. We are claiming that the Federal Government only has to do with the form, leaving the substance, the administration of the form of government, to the people of the States. Those who would ignore this word "form" from the restricted grant of power given by the States under the constitutional compact to the Federal Government would usurp the very substance to the Federal Government, and leave only the "form" or shell of republican government to the States.

The Senator from Wisconsin submitted this well-considered sentence to the Senate:

> If I am right in saying that it is the vital element of republican government that its rulers are chosen by the people, it follows that the present government of Louisiana, lacking this, is not a republican government.

I do not object to his definition. Republican government is one the vital element of which is that rulers are elected by the people. Ten years ago a majority of the people of Louisiana had no voice in electing the rulers. Was it a republican government? I do not say that it was. It certainly was not, under the definition stated. But as Congress had no right except over the form of government, it was never claimed that under the guarantee clause of the Constitution Congress could give the right to vote to the disfranchised majority of the people of that State. It required an amendment to the Constitution before that could be effected.

This word "form" is not a matter of chance as it occurs in this Constitution. The people of the Southern States, when they entered into this compact, knowing that large portions of their populations were disfranchised, and not intending that they should have a voice in the election of rulers, would never have agreed to insert in the Constitution that the Federal Government should see to it that their State governments should not only be republican in form, but also should see to it that the rulers were elected by the people. They stipulated that all the people should be considered and counted in the apportionment of representation, but not so in the election of rulers. If we turn to the history of this word "form" in the Constitution we find that it was carefully selected. I read from volume 2 of the Madison Papers. On the 29th of May, 1787, this resolution was introduced by Edmund Randolph as part of the plan for the Constitution, page 734:

> *Resolved*, That a republican government—

Using the words the Senator from Wisconsin insists on—

> ought to be guaranteed by the United States to each State.

That resolution came up again on the 18th of July, when this change took place, (page 1139:)

Resolved, That a republican constitution—

A very different thing; now it is being changed to a matter of governmental frame-work—

Resolved, That a republican constitution ought to be guaranteed to each State by the United States.

On the same day Mr. Randolph (on page 1140) caught the idea and changed his proposition in this wise:

Resolved, That no State be at liberty to form any other than a republican government.

This is a guarantee against despotism, against aristocracy, against democracy. That was considered awhile, and eventually Mr. Wilson moved that which was finally adopted, no one dissenting:

Resolved, That a republican form of government shall be guaranteed to each State.

It is the very substance of republican government that we give them order, tranquillity, peace, government; and we see to it that it is republican in form, and that we leave it to them to regulate their own affairs.

My friend may ask whether I am content that the people of Louisiana shall be the victims of fraud, and that their rulers shall be elected by chicanery. No, Mr. President; I am not content. I am not content that republican government does not exist in Turkey or in Russia; but we have no power to give those nations republican governments. We have more power, it is true, over the States than we have over those kingdoms, but we have no more power over the States than is granted to us in the Constitution, which is to give them government, and that republican in form. We regret to see men waste their estates and destroy their health in dissipation; but the value of individual freedom prevents such legislative restraints as might prevent the evils. Better have individual freedom with the evils than destroy it by chafing restraints. So better let the State election be free with the evils than impose restraints and supervisions that impair the freedom of the State.

Mr. CARPENTER. I want not to answer the Senator, but simply to ask him a question, as he did me the other day, so that I may distinctly understand him. Does he maintain that in case the three branches of government in Louisiana to-day, that is the men holding those three branches of government, shall collude together, the court to decide all questions in favor of the other two, the other departments to administer everything in their common interest, to keep themselves in power under the present existing republican constitution of that State during their natural lives, and they should do so

for fifteen years, would Congress have any power to interfere, the form—that is the constitution—being conceded to be republican?

Mr. FRELINGHUYSEN. That is not a case before us.

Mr. CARPENTER. It is two years before us.

Mr. FRELINGHUYSEN. I think I will show the case supposed is not before us at any time. It is difficult to solve questions put in this manner out of the order of debate; but my answer is: That if after repeated trials in a State, where we have performed our duty of giving them order and government, and of seeing to it that it is republican in form, it should turn out that the people were so depraved, ignorant, and degraded, so unfit for the blessings of republican government, that they abused all their privileges, I suppose it would then be incumbent upon us to fulfill that guarantee of the Constitution *pro tanto*, to fulfill it just as far as we could, and to give them government, even if it was under a military commission. But, sir, we will never be called upon to resort to that extreme measure, unless the extreme case which my friend has supposed, of the executive, legislative, judicial branches of government, and the people themselves, all combining in one dire conspiracy to destroy themselves.

Mr. CARPENTER. Let me correct my friend as to the effect of my question. My question meant this: Where the judges of the supreme court, the members of the Legislature and the executive department, the governor and the other officers, should combine among themselves to hold the people under their government, and the people should be of course resisting that, and the government should apply to the President to sustain it, and the President should interfere, and then the question should be presented to us whether, after that thing had continued for ten years, and they had avowed their purpose of continuing for life, we should have any power whatever to interfere? The particular case is only put to test the Senator's argument of the distinction between our guaranteeing a republican government and what he calls a republican form of government.

Mr. FRELINGHUYSEN. I think I have answered that question. I say that we are bound to carry out the guarantee of the Constitution. If the people are so entirely unfit for a republican government, we must still give them government, even if it is a military commission. But no such state of things will exist. You can suppose a condition of things which will prove that any government is inefficient and unfit for the purposes for which it is inaugurated.

Mr. President, if the Federal Government can, in the exercises of it arbitrary discretion—a discretion from which there is no appeal, and to which there is no review, not even by the people, for we are not responsible to the people of Louisiana for the votes given here—if the Federal Government can, in the exercise of this arbitrary power, set aside the election of governors and Legislatures of the States, then

there is an end of the independent government of the States. I submit that the procedure here contemplated is without precedent in the General Government, and without analogy in any of the State governments.

As a matter of necessity, deliberative assemblies must be the judges of the qualifications of their own members. We judge of the qualifications of Senators, and the House of those of Representatives. But further than this necessity extends was it ever heard of that an election of a State officer, a governor, a State treasurer, a comptroller, was set aside by a political body? An election is never set aside even by the judiciary. It is submitted to a dispassionate and impartial tribunal of justice, not to set aside an election, but to determine whether the claimant was ever elected.

Order a new election in Louisiana, and you have established a precedent that must impair elective government. Excited parties enter upon a strongly contested election; the one party is in harmony with the dominant party in Congress, (perhaps a Senator is to be elected by the Legislature:) that party seeks by violence and fraud to obtain success, and when it fails comes to Congress and makes that very fraud and violence the pretense for covering their defeat and for having the election set aside, and for having a second trial with the adverse party who were successful damaged and disgraced by having their victory set aside. No, sir: better far let the States suffer for their own misdeeds, even the innocent with the guilty; their suffering will lead them to cure the evil. Admonished by the evil results of a vicious election, in the calm periods that intervene between elections all parties will unite in devising and adopting safeguards to secure honest elections. Registry laws, poll-lists, proper places for the polls, police regulations, and severely penal statutes will be adopted as the means of preventing the repetition of the evil. We had better adhere to the Constitution and do what it says, which is that we shall guarantee to the several States government; which we did with Louisiana when we sent our troops there preserving order and tranquillity; and that we shall guarantee to them a republican form of government; which we did when we approved the constitution of Louisiana under which form that government is now carried on.

If there are frauds in elections or usurpations in office, let the remedy be found in the courts of the States or by means of impeachment, or by the frequently recurring popular elections. But let us adopt the theory that we are under the guarantee clause of the Constitution to interfere with States further than to secure to them order and tranquillity and a republican form of government, and that we are to see to it that the proper persons are in power, still I insist that Congress is not to order a new election in Louisiana. If Congress is to interfere, and there is one whom we know has been duly elected, and

who under the constitution of Louisiana is entitled to the office of governor, Congress surely is not to interfere by ordering a new election, but by placing the one entitled to the office by election and by the Louisiana constitution in power.

This election contest between Kellogg and McEnery was on November 4, 1872. On that day Warmoth was unquestionably the duly elected governor of Louisiana. We are called upon to order an election because no one has since been declared duly elected. But that is just the case which the constitution of Louisiana, as approved by us, provides for when in the fifteenth article, on the twenty-second page of this case, it says that the—

Governor shall continue in office until the Monday next succeeding the day his successor shall be declared duly elected.

If any one has in the sense of the Louisiana constitution been duly declared elected since the 4th of November, 1872, there is no pretense for our ordering a new election. If no one has been so duly declared elected, then Warmoth is governor until the Monday after such declaration, and our business is to reinstate Warmoth and not to order a new election. Can it be insisted that when the constitution provides that one elected by the people shall continue in office until a successor is elected we may interfere and deprive him of his office? If we interfere, it must be to place him in power.

Mr. CARPENTER. Will my friend allow me at that point a question? Taking that view of the case, suppose Governor Warmoth had continued to break up every election from 1872 on, and had been there four or five years as governor under that provision, would not Congress then have a right to interfere and order an election for the purpose of establishing a republican government in that State?

Mr. FRELINGHUYSEN. I do not see that what Warmoth might have done or might not have done alters the constitution of Louisiana. By that we are to be regulated and not by the vagaries of Mr. Warmoth. That constitution declares that Warmoth shall be governor until the Monday next after his successor is duly declared elected. Do not understand me to be in favor of reinstating Warmoth. I am not. I use the argument to show that we had better live up to the Constitution of the United States, guarantee to each State order and a republican form of government, and let the States determine for themselves whether they will have a Warmoth or a McEnery or a Kellogg as governor.

But again, Mr. President, if Congress should not reinstate Warmoth, still it should not order a new election; for the author of the bill we are considering tells us that McEnery had a majority of 9,606 votes over Kellogg. The returns themselves have been brought by subpœna from Louisiana and were before the committee; and the Senator from Wisconsin says that—

Ray McMillen and Pinchback were before the committee conducting their re-

spective sides of the case, and they all agreed that those were the returns, and agreed that those returns showed the result that had been arrived at by the De Feriet board that McEnery had 9,606 majority. There was no contest about it.

Some question in debate was made about there being forgeries in these returns, and the Senator from Wisconsin adds a note to his very able speech showing that that does not change the result. I may show what those returns are presently. They are paper; if true, valuable; if false, worthless; but I am looking at the case from my friend's stand-point. If we are to interfere it should be to install McEnery, not to destroy his election, for it is certainly as essential to a republican government that one elected to office should fill the office as that one not elected should not fill it. But the Senator from Wisconsin does not favor installing McEnery for this reason: He says "although of the ballots actually cast McEnery had a majority, yet in consequence of the frauds committed previous to the election that result utterly reverses what was the wish and intention of that people." That is no reason why McEnery should not be installed. If he had 9,606 majority of the votes cast he was *prima facie* governor, entitled to his seat, subject to being subsequently removed by judicial proceedings.

Mr. CARPENTER. Notwithstanding he obtained them by fraud?

Mr. FRELINGHUYSEN. Notwithstanding he obtained them by fraud.

Mr. CARPENTER. I cannot see now where would be the republican government.

Mr. FRELINGHUYSEN. In the State of Wisconsin Barstow was elected governor. (I refer to the case of Bashford *vs.* Barstow, fourth Wisconsin Reports, page 398.) He was not the true governor, he was not fairly elected, but he was inaugurated, sent his message to the Legislature, and acted as governor I think some sixty days, when an information was filed in the court of Wisconsin averring that Barstow was not elected but that Bashford was, and the result was that Barstow was ousted and Bashford inaugurated; and although, as I have understood, the incumbent had stacked the State-house with arms, the noiseless, silent power of the law ousted him and placed the true governor in power. So it would be no novelty that McEnery with his 9,606 majority should be placed in office and afterward removed therefrom when the fraud should be proven. Do not let me be understood as favoring the idea that McEnery should be made governor, for I do not. I insist that it would be more logical than to order a new election. I make the suggestion to show that we better stand by the Constitution of the country, and secure to every State order and a government republican in form.

But, Mr. President, again, it is not only more logical to install Warmoth or McEnery than to order a new election, but it is more logical

to leave Kellogg in power than to order a new election. Kellogg since 1872 has in fact been governor of Louisiana, and is now. Laws have been enacted with his approval, contracts have been made, rights have vested, the people of Louisiana have order, and government republican in form. That is not all. He is governor in accordance with the will of the people of Louisiana if the conclusions of the Senator from Wisconsin are correct, and he has given this subject much attention. In his recent speech he says:

So I believe, from this testimony and from the whole history of the case, that although of the ballots actually cast McEnery had a majority, yet in consequence of the frauds committed previous to the election, that result utterly reverses what was the wish and intention of that people.

* * * * * * *

My belief is, that if any judicial court to-day had jurisdiction of the question in Louisiana, the result of that election, as held, that is to say the result of the ballots actually cast, would be shown to be that McEnery was elected; but I am equally well persuaded that the result misrepresents the will and the intention of the people of that State on that election day, and that it was in consequence of these frauds and obstacles in the way of registration, and the fraudulent location of voting places, that Warmoth was able to carry that State by from six to nine thousand majority in favor of McEnery.

And in his speech of the 4th of March:

I do not think that McEnery was in fact elected, although the returns show that he was.

Mr. President, shall Congress in its interference disregard the claims of Warmoth under the constitution of Louisiana, disregard the claims of McEnery, who had nine or ten thousand majority, and turn out of office one who is now quietly discharging the duties there and has been since 1872, when we are told by the very mover of this measure that he is governor in accordance with the wish and intention of that people? I cannot come to that conclusion.

The Senator from Wisconsin, in speaking of the election in New York in 1868, says:

Griswold was elected, but Hoffman was canvassed in as governor of that State.

And he says that we should not interfere in that case, "not because Congress did not possess the power, but because such a case would not justify the exercise of it. Indeed each case must be judged of by its own circumstances and surroundings; and while Congress ought not to exercise this power on slight occasions, or to correct mere irregularity not productive of important consequences, yet in a case like this it would seem that if Congress possessed the power it ought to be exercised."

And in this case one of the circumstances to be considered is that Kellogg is and since 1872 has been exercising the duties of his office; that he is in office in accordance with the wish and intention of the people, to use the language of the Senator. It is strange that my friend should conclude that the Federal Government should not interfere in a case like

that of Hoffman when, according to his hypothesis, "Griswold was elected and Hoffman canvassed into office," and interfere in Kellogg's case. We ought not to interfere when one is in office against the will of the people, but we should interfere where the incumbent, he assures us, is in office in accordance with the wish and intention of the people. Is not the case of Hoffman much stronger than that of Kellogg; Hoffman misrepresenting and Kellogg representing the will of the people? If we were to adopt my friend's new theory in either case, we should have commenced in the case of New York and not in that of Louisiana.

Mr. CARPENTER. Will my friend allow me to interrupt him at that point?

Mr. FRELINGHUYSEN. Certainly.

Mr. CARPENTER. The vast difference between the two cases cannot fail to strike the Senator. In New York the governor alone was questioned, the Legislature was not questioned. The governor was not the law-making power. In Louisiana the whole law-making power of the State was in the same condition, and that bogus government may pass laws, may levy taxes, may repudiate the State debt; and all those things may be done by men not elected. In New York they could not do it. That is the difference in the magnitude of the two cases. I do not say there is any difference in the power, but as to the expediency of exercising it in one case, the evils to be feared from it are totally different from what they are in the other.

Mr. FRELINGHUYSEN. My friend cannot have failed to observe that I have said nothing about the Legislature of Louisiana. For all that I have said, he does not know but that I am in favor of his bill, so far as the Legislature is concerned. I have only treated of the governor's election, and his remarks referring to the Legislature of Louisiana are entirely foreign to the subject we are discussing.

Mr. CARPENTER. If that be so, there can be no difference in the case where one man holds a seat in a Legislature without an election, and a case where the whole Legislature hold without election.

Mr. FRELINGHUYSEN. If there is no difference between a governor and one member of the Legislature, the remark is pertinent; but inasmuch as the governor is but one branch of government, it is not pertinent.

Mr. CARPENTER. He is not the whole law-making power.

Mr. FRELINGHUYSEN. No; he is not.

Mr. MORTON. I suggest to the Senator, if he will permit me, that if Kellogg does represent the majority of the people of Louisiana, as seems to be conceded, it is equally certain that the Legislature represents the majority of the people of Louisiana.

Mr. FRELINGHUYSEN. And the singularity further about my friend's plan is that he would turn Kellogg out, although he represents the wish and intention of the people, because he has not a ma-

jority of the votes, but would not turn McEnery in, who has 10,000 majority; so that it seems this 10,000 majority is good as against Kellogg, but worthless in favor of McEnery.

But, Mr. President, passing by the question as to the constitutional power of Congress to do more than to preserve order and to secure a republican form of government, passing by the question of Warmoth, McEnery, and Kellogg, let us see whether a case is made in which we should order a new election.

The first thing to be established is that no one was elected governor, for if any one was, our duty, if we interfere in any way, clearly is to install the person so elected. On the 4th of November, 1872, an election took place. It had all the forms of an election, registration, polls, poll-lists, ballots, returns, registers, supervisors, &c. There were but two candidates, McEnery and Kellogg. One of those two men in fact had a majority of the legal votes cast unless there was a tie, and then we have nothing to do with the case, as the constitution of Louisiana provides that in that event the Legislature elects. One of the two must have had a majority of the legal votes; so the case cannot exist for a new election based on the fact that no one was elected. If we are to interfere it must be to find out who was elected governor and to place him in office.

To ascertain who by a majority of legal votes cast is entitled to an office, I had supposed was a matter over which the State courts had jurisdiction. If for any reasons the State courts have not jurisdiction, or if so corrupt that they cannot be trusted, then if we are to interfere we must address ourselves to the question, Who was elected? It cannot be advocated that, where it is a mathematical certainty that one of two candidates was elected, Congress shall order a new election, and thus set a premium on fraud. But we must find out who was elected.

The question as to who was elected governor does not seem to have attracted the attention of the Committee on Privileges and Elections. There were two things referred to that committee: first, whether there was any government in Louisiana, and second, whether the Legislature which elected McMillen, or that which elected Ray, was the true Legislature; and the attention of the committee was directed to finding out which was the true board of canvassers, so as to determine which was the true Legislature, and thus to decide whether McMillen or Ray was *prima facie* entitled to the seat in the Senate which expired on the 4th of March last, and there is but little evidence as to who was elected governor. I am sorry there is not more; but the burden of proof is with those who seek the removal of one who has for two years acted as and claimed to be governor.

I submit that the moral evidence that McEnery had not a majority of the legal votes cast, and that consequently Kellogg had, is to my

mind irresistible. Warmoth had the purpose, the intent, to carry that election by fraud. This is apparent, and is conceded. It is notorious that he, elected a republican, was to give the State to the democracy, and as a return was to grace the United States Senate. His legislature I understand, attempted to elect him, but this project was abandoned because it was thought it would interfere with the recognition of the State government by the General Government. He appointed a man named Blanchard to be register. That man has made an affidavit. If the affidavit be true his character is such that no one can approve; if it be untrue, comment is unnecessary. Blanchard appointed the supervisors in each parish or county, and the supervisor in each parish appointed three commissioners. To these were added three freeholders, who, with the commissioners, assisted the supervisors of the parish in counting the votes of the precincts. And we see at a glance that Warmoth could cheat Kellogg, but that Kellogg could not cheat Warmoth or McEnery. One could cheat. The organization of the election throughout the whole State originated with and was controlled by Warmoth. It is not denied that Warmoth meant fraud, and that he had the power to effect it. There was one circumstance which afforded great facility in carrying out this fraud. Almost every republican that came to the polls to be registered had a mark on him which said "I belong to the republican party;" he was a colored man. There were exceptions. There were some white republicans, but they were not so numerous that they were not known, so that it was an easy thing to make it difficult to get registration, or to secure the requisite identification between the voter and his registration papers.

It appears, then, that the McEnery party had the purpose to cheat, and had the organized machinery to effect their end. It looks as if, after all, the republican majority was too great for them. Warmoth knew that it was of the first importance that he should satisfy the public that McEnery had a majority, and how easily he could have done so. Instead of maneuvering to get a facile board of canvassers, instead of resorting to a legislative bill, which he as governor had carried for six months in his pocket and signing it so as to create a member of the canvassing board that suited him, all he need to have done was to call in twenty honest men in the State of Louisiana, republicans and democrats, take them to the State-house and there say, "Here are the returns; add them up in the presence of these interested parties." It was only a matter of addition. They could have publicly added them up, showed the result, and if any one standing by said "Those returns are false," all he need have done was to send to the supervisor of the parish whom he had appointed, and request him to bring the ballot-box and say, "There are the ballots; the returns are not false;" and if any one charged that the ballot-box had

been stuffed or that there had been votes abstracted, all he need have done was to send for the poll-lists and say, "There are the poll-lists; they correspond with the ballots;" and if any one charged that the poll-lists were false in a given precinct of such a parish, all he need have done was to send a justice of the peace to that parish; every man who had there voted had indorsed on his registration papers the fact that he had voted, and if a living man he could swear how he had voted.

Now, Mr. President, when one bent on fraud has it in his power to prove to a demonstration that his candidate is elected and shirks the investigation, it is moral evidence, irresistible, that the investigation would have proven that his candidate was defeated.

Mr. CARPENTER. Will my friend allow me a word at that point?

Mr. FRELINGHUYSEN. Yes, sir.

Mr. CARPENTER. The Senator does not claim, of course, that there is any law authorizing any such investigation, or that anybody would have been indictable for perjury who should have come before that town meeting which he imagines, and sworn falsely?

Mr. FRELINGHUYSEN. That is the best answer which can be made. But it is a matter perfectly immaterial whether the twenty honest men, ten democrats and ten republicans, whom he might have selected, were officials or not; the effect of their determination would have been the same on the public. There is in the case nothing that requires any oath; it is a matter of adding up the returns, and a matter of ocular demonstration whether the ballots correspond with the returns, and whether the poll-lists conform with the ballots in the box; and the only situation in which an affidavit could be required is that of a charge being made that in some precinct the poll-list was false, and you would seek the voter with his registration paper with him, to ask him how he voted. Some one could have been found under their laws to take such affidavit.

Mr. President, did not Warmoth know that investigation would prove his candidate not elected? At all events, is there affirmative proof that McEnery was elected on which we can remove Kellogg? But instead of doing all this, Mr. Warmoth comes to Congress, not to ask that his candidate may be installed in office; but he comes to ask that he may not be installed in office. That would lead to investigation. He asks that we will order a new election. And the wonder is that in the Senate, among those who thought it unconstitutional to set aside the State Government when in the hands of those who had sworn hostility to the United States Government, among those who thought it unconstitutional to set aside those mockeries of government that Andrew Johnson had erected, now hold it to be constitutional at the instance of Mr. Warmoth to go into Louisiana and to regulate the domestic elections of that State!

Mr. President, views similar in some respects to those which I have

expressed are set forth in the report of my friend from Wisconsin; for he agrees with me as to the vicious character of this election:

A careful consideration of the testimony convinces us that, had the election of November last been fairly conducted and returned, Kellogg and his associates, and a Legislature composed of the same political party, would have been elected. The colored population of that State outnumbers the white, and in the last election the colored voters were almost unanimous in their support of the republican ticket. Governor Warmoth, who was elected by the republicans of the State in 1868, had passed into opposition, and held in his hands the entire machinery of the election. He appointed the supervisors of registration, and they appointed the commissioners of election. The testimony shows a systematic purpose on the part of those conducting the election to throw every possible difficulty in the way of the colored voters in the matter of registration. The polling places are not fixed by law, and at the last election they were purposely established by those conducting the election at places inconvenient of access in those parishes which were known to be largely republican; so that, in some instances, voters had to travel over twenty miles to reach the polls. The election was generally conducted in quiet, and was perhaps unusually free from disturbance or riot. Governor Warmoth, who was the master-spirit in the whole proceeding, seems to have relied upon craft rather than violence to carry the State for McEnery. In the canvass of votes, which determined the McEnery government to be elected, the votes of several republican parishes were rejected.

Mr. President, I further submit that, as might be expected from the circumstances referred to, we have nothing amounting to evidence that McEnery had any majority, and for these five reasons: First, the question has at best been only incidentally examined by the committee; second——

Mr. CARPENTER. The Senator overlooks the fact that we had two inquiries before the committee: one, whether there was a State government in Louisiana. It is therefore not incidentally before us, but directly.

Mr. FRELINGHUYSEN. I will come to that. My second reason for saying that we have nothing amounting to evidence of McEnery's election is that from six out of fifty-eight parishes we have no returns; third, from several of the parishes the returns are forgeries; fourth, from one at least it is in proof by an eye-witness that the returns were manufactured and sworn to in blank before they were made.

Mr. CARPENTER. What case is that?

Mr. FRELINGHUYSEN. I will give it to you presently. Fifth, the preponderance of evidence is that Kellogg and not McEnery had a majority of the votes cast. Now I will say a word or two on each of these points.

That the committee did not give their attention to the question whether Kellogg or McEnery had the majority, no matter what the resolution says, is manifest from an examination of the case. Their attention was given to the question which was the true canvassing board so as to determine which was the true Legislature, in order that

they might determine whether Ray or McMillen was *prima facie* entitled to be Senator: and if you want proof that this phase of the subject has not been examined, you have only to look to the report. On the last page of the book is this testimony; one witness, Mr. Ray, says:

I desire to call the attention of the committee to a statement. At a suggestion made by one member of the committee yesterday, I examined and found, and if the committee will act as experts they will find, that the commissioners of elections in several cases in the parishes have their names forged to the affidavits.

Mr. CARPENTER. In the parishes named, naming four parishes.

Mr. FRELINGHUYSEN. I do not think that is the meaning; but I will read it just as it is:

If the committee will act as experts they will find, that the commissioners of elections in several cases in the parishes have their names forged to the affidavits. For instance, there is one from Madison Parish, [exhibiting the papers,] and so in the parish of Grant also, and in the parish of Point Coupée and the parish of East Baton Rouge, which, if the committee will examine as experts, they will find it very evident in some cases that they were forged.

The CHAIRMAN. We will now consider the evidence in the Louisiana investigation closed, as I am advised by both sides that they have laid all the testimony before the committee that they desire to present.

Mr. CARPENTER. The returns being before the committee.

Mr. FRELINGHUYSEN. Mr. President, we are called upon to determine that Kellogg is not governor, when it was in proof before the committee that in several cases the returns were forged, the witness instancing four cases, and not a question was asked or any testimony taken in reference to the matter. Why, you might as well throw up figures on cards to see how they will land in order to solve a mathematical demonstration as to establish a majority by such testimony.

Mr. CARPENTER. Will my friend allow me a word? These returns were before the committee. Mr. Ray, the witness called there, did not pretend to have any knowledge about it except what arose from looking at the papers.

Mr. FRELINGHUYSEN. That is all.

Mr. CARPENTER. He and Mr. McMillen, both being Senators as they claimed, and therefore perfectly competent to settle this question for themselves, attached no importance to that from the fact that it did not change the result if it was so; and the returns were left with the committee after that time.

Mr. FRELINGHUYSEN. I will pay attention to those returns before I close, and in a few minutes. It is clear that the committee did not attempt to find out what returns were forged and what were not, for on the presentation of this controlling fact the whole testimony was closed and the report is based on the testimony as it then stood.

Again, from six out of fifty-eight parishes we have no returns—Iberia, Iberville, Saint James, Saint Martin, Saint Tammany, Terre-

bonne—as appears by the certificate of the Forman board found on page 81 of the report. It is said that three of these six parishes were rejected because of violence. Forman says so in his testimony on the seventy-sixth page. They have given no evidence of the violence excepting in one case, and that is spread out from the six hundred and fifth to the six hundred and forty-first page—thirty-five pages of evidence relating the alleged violence in the parish of Iberville. This was a republican parish, having a strong preponderance of colored votes. There were from seven to eight hundred white votes and three thousand colored votes registered. The white vote was made up, as we know, of the democrats, and in that parish of democratic planters. To their credit be it said that there seems to have been no man in the parish who suited Mr. Warmoth as supervisor, and a Mr. Tharp was brought from New Orleans and was made supervisor. The commissioners took the ballot-boxes with the poll-lists to Plaquemines. The colored men were orderly, but when voting was over they armed and followed the ballot-boxes to Plaquemines. They claimed the right to go into the State-house. The sheriff prohibited them. They had a right to go in. We would have gone in. They, intent and earnest, watched that ballot-box. When one party would grow weary others would relieve them, and they stood at the windows watching the boxes.

In all the testimony of thirty-five pages there is no evidence of one act of violence; and that is one of the three parishes the returns of which were rejected because of violence. What the violence was in the other two parishes they have not had the grace to give us one word of testimony to inform us. There was no violence. There was no reason that the ballots should not have been counted and the returns made up, excepting that it was a strong republican parish. I will show presently the effect of the exclusion of these parishes.

The returns from several of the parishes are forged, but they all go in to make up McEnery's majority, as we shall see presently. The Senator from Wisconsin very fairly, in a calculation with which I, having gone over the figures, entirely agree, makes a deduction for those parishes. From one of the parishes the returns were manufactured; and there my friend asks me for the evidence, and I will trouble the Clerk to read from pages 909 and 910 of the testimony—that which I have marked.

The Chief Clerk read as follows:

STATE OF LOUISIANA, *Parish of Orleans, City of New Orleans:*

Personally came and appeared before me, Robert H. Shannon, United States commissioner in and for the district of Louisiana, John P. Montamat, of the city and State aforesaid, who, being duly sworn, doth depose and say that during the month of November, 1872, and for four years before, he was a justice of the peace for this parish of Orleans; that in the month aforesaid, after the election held in this parish for governor and other State and parochial officers, "what date I cannot recollect,

out it was while they were counting the votes at the State-house, at the Mechanics' Institute, situated on Dryades street," one Jack Wharton, also of this city and parish aforsaid, came to my office, situated No. 33 Exchange alley, near Custom-house street, in this city and parish aforesaid, and requested that I should go with him in a certain place in this city of New Orleans, in order to administer the oath to one of the supervisors of election in and for the parish of Madison. At said request I went with Jack Wharton, who took me in a house situated on Gravier street, somewhere near Barronne street; the entry-doors were closed, and at the signal given by Jack Wharton, (three consecutive and hard raps,) the doors were opened. In the said room I saw one Cahoon, whose first name I do not know, but whom I had seen before in this city; he, the said Cahoon, then and there informed me that he was the supervisor of election for the parish of Madison, appointed by Henry C. Warmoth, then governor of Louisiana, and that he wished me to swear him as to the returns of the late election. I saw there several persons whom I did not know; they were making up tally-lists of the returns of the election for the parish of Madison. The lists were signed in blank by the commissioners of election. I inquired from Cahoon, the supervisor, how it was that he had not prepared the lists and returns in the parish where he came from. He told me that he could not count the votes there; it was a republican parish, and that he had to run away because he wanted to count the votes, and admit no one except a few, and he would have it his own way, and would here in New Orleans return such persons as he thought proper. I swore him to several tally-lists and returns. I believe, to the best of my knowledge, that the greater part of the tally-lists were yet in blank when I swore him.

JOHN P. MONTAMAT.

Subscribed and sworn to before me this 3d day of February, 1873.

[SEAL.] R. H. SHANNON,
United States Commissioner, District of Louisiana.

Mr. FRELINGHUYSEN. There was a secret place entered by arranged signals where officers were engaged in making up returns, a number of which were sworn to in blank and filled up afterward. Now read, if you please, the rest of that marked.

The Chief Clerk read as follows:

Question. Taking your estimate of the votes in these parishes where these frauds are charged, if the vote had been fairly counted, what would have been the result as compared with the vote in the parishes where no frauds are charged?

Answer. I do not understand your question.

By Mr. HILL:

Q. What would have been the effect on the general election?

By Mr. LOGAN:

Q. What would have been the result of the election?

A. O, if there had been no frauds in these parishes, and they had returned the vote as they did in some of the parishes, fairly, they would have given the republican ticket a very large majority, according to their own returns.

Q. In the State?

A. Yes, sir; in the State.

Q. Do you speak of the votes actually cast, or the voters in the district?

A. I refer to the voters; but the votes actually cast, in my judgment, if properly returned, would have given the republican party a majority in the State. I have no doubt of that.

Q. That is, the votes as they were actually cast?
A. Yes, sir; as actually put in the boxes.

Mr. MORTON. I ask what parish that was?

Mr. FRELINGHUYSEN. A parish some two hundred miles away.

Mr. WEST. The parish of Madison.

Mr. MORTON. How far away?

Mr. WEST. It is three hundred miles from New Orleans.

Mr. FRELINGHUYSEN. Mr. President, let us look at the effect of the facts I have called attention to upon McEnery's majority. They claim for McEnery a majority of 9,606. The four parishes where there were forgeries and the six parishes from which there are no returns, according to the Lynch board, give Kellogg a majority of 7,295.

Mr. CARPENTER. It is not pretended that all the returns in those parishes were forged, but only one or two of them.

Mr. FRELINGHUYSEN. It probably is much worse than those four parishes. They are mere illustrations. The returns from those the witness holds up and says, for instance, these are forged. He says there were forgeries in several parishes, and instances these four. Now take the 7,295 majority in six parishes not returned and in four in which the returns were forged from the 9,606, and it leaves McEnery's majority, as the Senator from Wisconsin agrees, 2,611. Now let us see what becomes of that 2,611 majority. Let anybody who wants to examine this read the three hundred and sixth page of the testimony which was sent here with the President's message. There is Caddo Parish. The white registration was 1,549 and McEnery's vote 1,837—nearly 300 more than the white registration. The colored registration was 3,139, and Kellogg's vote 1,576, or 1,563 less than the colored registration. This shows fraud not before but after the election. It points to a falsification of returns, for frauds in keeping men back from the polls probably would not give McEnery 300 more votes than there were white votes registered.

Mr. CARPENTER. How can you tell whether a ballot was cast by a black man or a white man?

Mr. FRELINGHUYSEN. No; but my friend's report states that the colored men were republicans as a general rule, and the whites democrats. Take Rapides Parish. The white registry was 1,011; McEnery's vote was 1,960, or 949 more than the white registration. In Natchitoches the white registration was 1,486, and McEnery's vote 1,230; the colored registration was 1,875, and Kellogg's vote only 55. In Bossier Parish the white registration was 578; McEnery's vote 953, or 375 more than the white registration; the colored registration 1,795, and the vote for Kellogg 555. It is perfectly apparent that the fraud was in the returns as well as in the manner in which the election was conducted.

But again, take another view of these returns. There are fifty-eight

parishes in Louisiana. In twenty-four—Ascension, Bienville, Calcasieu, Caldwell, Cameron, Carroll, Claiborne, Concordia, East Feliciana, Franklin, Jackson, Jefferson, Lafayette, Livingston, Ouachita, Pointe Coupée, Red River, Sabine, Saint Bernard, Saint Charles, Saint John Baptist, Tangipahoa, Tensas, and Orleans—which are those where there is not much difference between the two boards of canvassers in the result, in those twenty-four parishes by the Forman board there is an aggregate of 36,679 democratic votes and 36,203 republican votes, giving a democratic majority of 476. According to the Lynch board the republican vote was 35,590 and the democratic vote 33,817, giving a republican majority of 1,673. The Forman board gives a democratic majority of 476 and the Lynch board a republican majority of 1,673, no very great difference for such an election: average it, and call it a majority of 1,000 for Kellogg. The vote was close and the registration was correspondingly so. The white registration was 52,979 and the colored registration was 51,469. The democratic vote and the white registration, the republican vote and the colored registration correspond.

Now look to the remaining thirty-four parishes. By the Forman board the democratic vote is in the aggregate 27,788: the republican vote 20,170, giving a democratic majority of 7,618. This is manifestly a fraud, and is thus shown. In those thirty-four parishes the registration of whites was 34,786, and that registration gives a democratic vote of 27,788. The registration of the colored people was 42,879, and that gives a republican vote of only 20,170. If the same ratio of republican votes was given for the 42,000 colored registered voters as of democratic votes given by 34,000 white registered votes, which was 27,788, the republican vote would be 35,000 instead of 20,170.

Now let us see what becomes of McEnery's majority. The difference between 35,000, the true vote by all the analogies of this case and according to the Lynch board, and the 20,170 that the Forman returns give for these thirty-four parishes is 14,830. Take from that McEnery's majority of 9,606, and it leaves Kellogg's majority 4,924. Add to the 4,924 the majority which Kellogg had in the twenty-four parishes, and it makes Kellogg's majority 5,924.

You may turn this subject any way you please, and you will find that Kellogg was not only the representative of the will and intention of the people, as the Senator from Wisconsin says, but that he had a majority of the legal votes cast. At all events there is no affirmative proof on which to displace him.

Shall we turn Kellogg out of office, when all admit that he represents the will of the people and when the preponderance of evidence is that he had a majority of votes cast, for the sake of giving effect to the fraud which was most infamously perpetrated in that Louisiana election?

A word more, Mr. President, and I have done. There is another view of this case conclusive against a new election. We are considering this case as a Legislature and not as a court: we are exercising political, not judicial powers. A court is confined to the record, must decide upon the issue, must be controlled by rigid and fixed rules. If a case is brought before it it must decide it. A Legislature has a broad discretion: it has an arbitrary discretion, except so far as it is controlled by the constitution of the country and by good conscience. The Senator from Wisconsin, not in reference to this case particularly, but in stating the principle of the bill, holds that Congress has the right, without any application coming from a State, where the State courts have declared an election to be valid, to set aside the election and to order a new one. I cannot agree with him, and am glad that there is one relief to this prodigious power. The Senator from Wisconsin states the relief while stating the power. He says:

> The question is in its nature political, not judicial; and no court, State or national, can settle it so as to preclude Congress from inquiring into it and settling the question for itself.

It is a relief to know that we need not exercise the power, its exercise being left to our political discretion. What propriety is there in ordering a new election in Louisiana? It would be a sheer volunteer act. No one asks our interference. The governor is in office: the General Government acquiesces; laws are enacted: contracts made, and rights vested. All agree that Kellogg represents the wishes of the people, and it seems as if the preponderance of evidence is that Kellogg had a majority of the votes cast. And here let me say that I do not agree with the Senator from Wisconsin that Congress is making a precedent even if it does not order a new election. We are no more doing so in the exercise of a political discretion on this subject than we are whenever we refuse to pass a bill. Our discretion is *arbitrary*, controlled only by the Constitution and by good conscience.

In reference to the Legislature I have nothing to say. It would be very unwise to order an election for members of the Legislature, for an election under the laws of the State will take place as soon as could be had under a law of Congress. The bill, I think, should not pass.


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